**Editor's note: Appealed -- settled, lease awarded, Civ. No. 76-274 (D.Utah)**

RAY GRANAT, ET AL.

IBLA 76-9, 76-85,
76-101, 76-159 Decided June 7, 1976

Consolidated appeals from decisions of four State Offices, Bureau of Land Management, rejecting oil and gas lease offers filed on drawing entry cards.

Affirmed.

1. Oil and Gas Leases: Applications: Generally--Oil and Gas Leases: Applications: Drawings

   A simultaneous oil and gas lease offer is properly rejected and the filing fee retained where the offeror, in completing the drawing card, does not provide the name of the state in which the parcel of land is located.

APPEARANCES: Each appellant, pro se.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

The appeals of Ray Granat, Therman M. Skillern, Carl S. Gilbert, and Grover Tyler 1/ are consolidated because each presents substantially the same fact situation and issue. Each appellant had filed a drawing entry card for a parcel listed in the monthly list of lands available to simultaneous oil and gas leasing, the offer of each was drawn first for the respective parcel, and each offer was

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1/ Ray Granat, U-30247, IBLA 76-9, Therman M. Skillern, C-22810, IBLA 76-85, Carl S. Gilbert, CA-3022, IBLA 76-101, Grover Tyler, M-31979, IBLA 76-159.

thereafter rejected because the drawing entry card did not have the name of the appropriate State where the lands are situated inserted at the appropriate place.

The pertinent regulations provide:

> Offers to lease such designated leasing units by parcel numbers must be submitted on a form approved by the Director, "Simultaneous Oil and Gas Entry Card" signed and fully executed by the applicant or his duly authorized agent in his behalf. * * * (Emphasis added.)

43 CFR 3112.2-1(a). BLM Form 3112-1 (May 1974) was designated as the correct form of lease offer for simultaneous filing by notice published in the Federal Register, 34 F.R. 24523 (1974). That same notice contained this statement:

> Failure to complete any part of the card will disqualify the applicant for participation in the drawing and will result in the retention of the $ 10 filing fee by the Federal Government as a service charge.

The appeals essentially contend that the instructions for naming the State are ambiguous, and that filing of the card in a specific State Office should be indication of the State intended. Another reason for appeal is that the parcel number and legal description of the parcel positively locate the parcel in the correct State. One appellant argues that rejection of the offer for failure to name the State is arbitrary and that the filing fee should not have been taken if he had no chance to win.

[1] In Albert E. Mitchell, III, 20 IBLA 302 (1975), this Board affirmed a decision of the Eastern States Office, Bureau of Land Management, which had rejected several oil and gas lease offers on drawing entry cards for failure to include the name of the State in which the parcels were located. The Board found that the regulations and notice make it clear that no mistakes will be permitted.

We also note that in a widely publicized Instruction Memorandum, IM 75-194, dated April 25, 1975, the Associate Director, Bureau of Land Management, lists certain procedural changes in the processing of simultaneous oil and gas lease offers. The Instruction Memorandum specifically states that the entry card of a successful drawee will be rejected, subject to the right of appeal, if the drawee has failed to complete the entry card by omitting the State.

We adhere to the position set forth in Mitchell, supra, and hold that, on the basis of 43 CFR 3112.2-1(a), the notice in the Federal Register relating to the use of the drawing entry card, and BLM Instruction Memorandum IM 75-194, simultaneous oil and gas lease offers must be rejected where the offerors did not include the name of the appropriate State in the designated space on the card. As for the filing fee, the Board stated in Mitchell, supra, that the notice in the Federal Register made it clear that the $ 10 is "earned" at the time of the filing. Albert E. Mitchell, III, supra. Therefore, such fee will be retained.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decisions appealed from are affirmed.

Douglas E. Henriques

Administrative Judge

We concur:

Anne Poindexter Lewis
Administrative Judge

Joan B. Thompson
Administrative Judge

Martin Ritvo
Administrative Judge (see separate concurrence)

Edward W. Stuebing
Administrative Judge

Joseph W. Goss
Administrative Judge

ADMINISTRATIVE JUDGE RITVO CONCURRING:

While I agree with the reasoning and result of the majority, I would like to comment on the rationale offered by the dissent in this case and in John R. Mimick, 25 IBLA 107 (1976), also issued today.

The dissent suggests two reasons for relieving appellants of the consequences of their neglect to complete the form.

First, it finds the form ambiguous and concludes that offerors should not suffer for failure to comply with an ambiguous requirement. Whatever merit there is in the contention that the form is ambiguous in its call for a "State," would apply only if the offeror filled in the blank with one of the possible alternatives. Then he might contend that he misread the form and supplied the information he (reasonably but erroneously) thought was required. But when he has made no attempt to supply any state name, although clearly some state name is required, there is no merit to a reliance upon ambiguity as a possible exculpation, unless we were to assert that the ambiguity was so overwhelming it paralyzed the offeror.

The other point made in the dissent is that the "state name" serves no useful purpose. This, of course, is an argument often made by an offeror who fails to comply with a requirement imposed by statute or regulation. Judge Fishman, in Mary Ann Spear, 25 IBLA 34 (1976), considered recently another regulation which, it is often alleged, imposes a meaningless requirement. 1/ There he held that the requirement is required by the regulation, and the offeror (also successful in a simultaneous filing) lost his priority because of his failure to comply with the regulation.

I do not see why in this case the usefulness of a requirement is an issue when in the Spear case and many other identical cases, it was not.

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1/ 43 CFR 3130.4-4 requires from an offeror for a lease for land in which the United States owns less than the entire mineral interest a statement as to the extent of the offeror's ownership of operating rights in the fractional mineral interest not owned by the United States. In some situations the offeror's answer will have no bearing or whether a lease issues. Yet if he fails to file the statement, his offer is rejected. Arthur C. Meinhart, 11 IBLA 139, 144, 145 (1973), and 151 (dissenting opinion). Mary Ann Spear, supra, and cases cited.

These comments apply as well to the dissent in Mimick, supra, a companion case to this one. In his dissent in Mimick, Judge Fishman also contends that in a few special instances the Department has departed from the rigid requirement of compliance with regulatory requirements. After recognizing that this has been permitted only in a "few special instances," he cites two cases. One, United States v. Humboldt Placer Mining Co., 71 I.D. 434 (1964), is indeed unusual, even upon a casual perusal. It involved an imposition upon the federal courts, including the Supreme Court, which had dealt with the litigation on the assumption that there was a viable contest. The Department, in the absence of the interest of a third party, permitted a contestee who had not filed a timely answer to a complaint in a mining contest to petition for permission to file late. I do not find this precedent for so routine a case as this one, especially since the interests of third parties are involved here.

The other case, Arthur E. Meinhart, 5 IBLA 345 (1972), rests as much upon the ambiguity of a regulatory requirement as it does on departure from that requirement. In any event, Meinhart cited no support for the suggestion that a departure from a regulatory requirement was to be allowed. The dissenting opinion pointed out that the protested offers were defective because they did not comply with the regulatory requirement and ought to have been rejected where conflicting parties claim priority. Id. at 360.

The dissent also cites North American Coal Corp., 74 I.D. 209 (1967), where the Department accepted a bid in a competitive lease offering from a bidder who had failed to comply with a requirement that gave him no advantage over other bidders. That decision relied upon decisions of the Comptroller General permitting such deviations because there was no disadvantage to the other bidders and the interest of the United States in receiving maximum value was involved. If the Comptroller General has unauthorized departures in noncompetitive situations where the interests of third parties are at stake and it is immaterial to the United States which offeror receives a lease, I am unaware of them, and the dissent has not pointed out any such instances.

In fact, this Board in Ballard E. Spencer Trust, Inc., 18 IBLA 25 (1974), discussed at some length the question of whether the Department should allow a successful drawee to "cure" defects in his first-drawn card where it did not comport with the mandatory requirements, and after making comparisons between competitive and noncompetitive applications, this Board adhered to the consistent line of Departmental decisions that such a defective offer must be rejected.

The other cases cited by the dissent treated individual rights in personal actions where the rights of only the applicant were at issue. They throw little light on the requirement to adhere strictly to regulations devised to permit the fair and expeditious handling of thousands of conflicting applications filed each month in many State Offices of the Bureau of Land Management.

Martin Ritvo

Administrative Judge.

ADMINISTRATIVE JUDGE FISHMAN DISSENTING:

For the reasons stated in my dissenting opinion in John R. Mimick, 25 IBLA 107 (1976), I respectfully dissent.

The error for which the majority would strip appellants of their entitlements to oil and gas leases is that they individually omitted the name of the state in which the respective parcels are located.

The BLM does not assert, and nothing in the records so indicates, that BLM or any other party was in any way whatsoever disadvataged by that omission. The Simultaneous Oil and Gas Drawing Entry Card form does not show with any degree of clarity that what is desired is the state in which the parcel is located.

The difficulty with the application of the regulation in the instant cases is that an examination of the form shows a clear ambiguity. While the form expressly requires an applicant's name, address (complete with city, state and zip code), the social security number or taxpayer number, and the parcel number applied for, and the form provides boxes for the requested information, the word "State" merely appears on the right hand side of the card between the social security number or taxpayer number and the parcel number, without any box provided for the information. Additionally, from the face of the card as well as the notices of available lands it is unclear whether the applicant should name the state conducting the simultaneous drawing or the state in which the lands are located, or the state in which he resides. As an example, if a person were applying for a lease of a parcel of land in Oklahoma it is unclear whether he should enter Oklahoma as the situs of the land or New Mexico as the State Office with jurisdiction over oil and gas leasing within the State of Oklahoma, or the state containing his residence.

This Board has often ruled that "regulations should be so clear that there is no basis for an oil and gas lease applicant's noncompliance with them before they are interpreted so as to deprive him of a statutory preference right to a lease." Murphy Oil Corp., 13 IBLA 160 (1973); Mary I. Arata, 4 IBLA 201, 78 I.D. 397 (1971); Georgette B. Lee, 3 IBLA 272 (1971). Other decisions reinforce this concept. Pressentin v. Seaton, 284 F.2d 195 (D.C. Cir. 1960); Madge V. Rodda, 70 I.D. 481, 483 (1963); Donald C. Ingersoll, 63 I.D. 397 (1956); Madison Oils, Inc., 62 I.D. 478, 483 (1955).

The omission of the name of the state has no relation to the qualifications of the offeror to receive the oil and gas lease. Nor did the offeror have any advantage over other offerors in the drawing because of the omission. If the drawing entry card identifies a parcel, by number, in the list of lands available, and after being drawn with first priority the offeror submits the required rental payment timely when called upon, he should receive an oil and gas lease for the described parcel.

In sum, I believe that appellants are being deprived unwarrantedly of their statutory preference rights to leases.

Frederick Fishman,

Administrative Judge.

I concur:

Newton Frishberg
Chief Administrative Judge